IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP NO.15536 of 2006

DATE OF DECISION: 28.9.2006

Shamshad Ali ....Petitioner.

Versus

State of Punjab ....Respondent.

CORAM: HON'BLE MR.JUSTICE J.S. KHEHAR
HON'BLE MR. JUSTICE S.D. ANAND

PRESENT: Mr. Vivek Sharma, Advocate for the petitioner.

J.S. Khehar, J. (oral)

The petitioner desires to be considered for appointment against the 62 posts of Assistant District Attorney in the Prosecution and Litigation Department of the State Government, in furtherance of the advertisement issued by the respondents on 11.9.2006. The challenge in the present writ petition is that the qualifications depicted in the advertisement dated 11.9.2006 rendered the petitioner ineligible for consideration. It is this aspect of the matter, which is subject matter of challenge at the hands of the petitioner.

In order to substantiate his contention, learned counsel for the petitioner has invited our attention to Punjab Assistant District Attorney, Grade II (Class II) Service Rules, 1989 (hereinafter referred to as the `1989 Rules') and specifically to rule 7 thereof. Rule 7 of the aforesaid Rules is being extracted hereunder:-

"7. Method of appointment and qualifications.(1) Appointment

to the service shall be made:-

(a) Ninety-five percent by Direct appointment of persons who have degree of Bachelor of Laws (Professional Degree) of a recognised University or who are Barristers of England or Ireland of are member of faculty of advocates of Scotland and are eligible for being enrolled as an Advocate under the Advocates Act, 1961;

(b) Five percent appointment by promotion to the post of Assistant District Attorneys (Grade-II) shall be made from amongst the Assistants and Stenographers working under the control of Director Prosecution and Litigation, Punjab, who have degree of Bachelor of Law (Professional Degree) of a recognized university and who are eligible for being enrolled as an advocate under the Advocates Act, 1961.

(c) In case no suitable candidate is available by direct recruitment or by promotion, the Government shall make recruitment by transfer of persons already in service of the State Government possessing the requisite qualifications and experience specified for the post for direct appointment.

(2) An appointment to the service by promotion shall be made by selection on seniority-cum-merit and on person shall be entitled to claim promotion on the basis of seniority alone.

(3) No person shall be recruited to the service by direct appointment unless he possesses knowledge of Punjabi language upto Matriculation Standard or its equivalent or passes a test in Punjabi Language of Matriculation Standard to

be held by the Board or any other recruiting authority of the Government."

It is the pointed contention of the learned counsel for the petitioner that the aforesaid rule, which stipulates eligibility conditions for appointment by way of direct recruitment to the post of Assistant District Attorney does not lay down any experience pre-condition for eligibility, whereas in the advertisement dated 11.9.2006 only such candidates can apply for the advertised posts who have, besides the other educational qualifications, two years experience of practice at the Bar. It is, therefore, the contention of the learned counsel for the petitioner, that the action of the respondents in stipulating the aforesaid eligibility condition, besides being violative of the statutory rule, extracted above, is also in clear conflict with the observations recorded by the Apex Court in All India Judges Association V. Union of India, 2002(3) Services Law Reporter 271. Reference in this behalf has been made to the following determination at the hands of the Apex Court:-

" In the All India Judges case (1993(4) SCC 288 at p.314), this Court has observed that in order to enter the judicial service, an applicant must be an advocate of at least three years' standing. Rules were amended accordingly. With the passage of time, experience has shown that the best talent which is available is not attracted to the judicial service. A bright young law graduate after 3 years of practice finds the judicial service not attractive enough. It has been recommended by the Shetty Commission after taking into consideration the views expressed by it by various authorities, that the need for an applicant to have been an advocate for at least 3 years should be

done away with. After taking all the circumstances into consideration, we accept this recommendation of the Shetty Commission and the argument of the learned amicus curiae that it should be no longer mandatory for an applicant desirous of entering the judicial service to be an advocate of at least three years' standing. We, accordingly, in the light of experience gained after the judgment in All India Judges' case, direct to the High Courts and to the state governments to amend their rules so as to enable a fresh law graduate who may not even have put in even three years of practice, to be eligible to compete and enter the judicial service. We, however, recommend that a fresh recruit into the judicial service should be imparted with training of not less than one year, preferably two years."

Learned counsel for the petitioner has also relied on section 25 of the Code of Criminal Procedure to supplement the contention noticed hereinabove. Section 25 of the Code of Criminal Procedure is being extracted hereunder:-

"25. **Assistant Public Prosecutors**.-(1) The State Government shall appoint in every district one or more Assistant Public Prosecutors for conducting prosecutions in the Courts of Magistrates.

(1A) The Central Government may appoint one or more Assistant Public Prosecutors for the purpose of conducting any case or class of cases in the Courts of Magistrates.

(2) Save as otherwise provided in sub-section (3), no police officer shall be eligible to be appointed as an Assistant

Public Prosecutor.

(3) Where no Assistant Public Prosecutor is available for the purposes of any particular case, the District Magistrate may appoint any other person to be the Assistant Public Prosecutor in charge of that case:

Provided that a police officer shall not be so appointed -

(a) if he has taken any part in the investigation into the offence with respect to which the accused is being prosecuted; or

(b) if he is below the rank of Inspector."

We have considered the submissions advanced by the learned counsel for the petitioner. It is, however, not possible for us to accept the aforesaid contentions of the learned counsel for the petitioner.

It is not possible for us to accept that the pre-conditions depicted in the advertisement dated 11.9.2006 are in conflict with rule 7 of the 1989 Rules, extracted above. Merely because a qualification, in addition to the qualifications prescribed by the 1989 Rules, has been laid down as a pre-condition for eligibility to participate in the process of selection, does not mean that the rule has been violated. In our view, the prescription of an additional qualification, besides the qualification prescribed in the rules, does not amount to violation of the rules.

In so far as the reliance on the decision rendered by the Apex Court in All India Judges Association is concerned, the logic which was the foundation of arriving at the conclusion that experience should be done away with for appointment to the judicial service, is clearly inapplicable to the posts under reference, namely, the post of Assistant District Attorney. It

will be counter productive to have qualified individuals without any experience to discharge the duties of the post of Assistant District Attorney. In a manner of examining the issue, it may well be stated that in such a situation the post of Assistant District Attorney will be a training ground for those selected, who have no experience at the Bar.

Relying on section 25 of the Code of Criminal Procedure, it is stated that the aforesaid provision also does not stipulate any condition of experience for appointment of an Assistant Public Prosecutor. It is not possible for us to accept the instant contention of the learned counsel for the petitioner, precisely for the same reasons as we have not accepted the contention of the learned counsel for the petitioner based on the 1989 Rules.

For the reasons recorded above, it is not possible to accept either of the contentions of the learned counsel for the petitioner.

Dismissed.

(J.S. Khehar)
Judge

(S.D. Anand)
Judge

September 28, 2006.
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